

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

IN RE)	
)	
WILLIAM SOHN DUMAN,)	Case No. 00-20417
aka Sohn Duman and)	
ELIZABETH ANN DUMAN,)	
aka Liz Duman Seubert,)	
husband and wife,)	
)	
Debtors.)	MEMORANDUM OF DECISION
)	AND ORDER
)	
_____)	

HONORABLE TERRY L. MYERS, UNITED STATES BANKRUPTCY JUDGE

Kenneth L. Anderson, Lewiston, Idaho, for Debtors.

S. David Swayne, Moscow, Idaho, chapter 7 Trustee.

Gary L. McClendon, Office of the U.S. Trustee, Boise, Idaho.

BACKGROUND

On April 13, 2000, William and Elizabeth Duman ("Debtors") filed a voluntary petition for chapter 7 relief. Debtors' schedule C claimed exemptions in various assets. The chapter 7 Trustee, S. David Swayne ("Trustee") filed a timely objection to the Debtors' claimed exemptions. Fed.R.Bankr.P. 4003(b).

On May 8, Debtors amended their schedule C recognizing that the Idaho Legislature had amended Idaho Code § 11-605(10). Prior to amendment, this section provided what Debtors have characterized as a “wild card” or “catch-all” exemption. It provided an exemption for:

(10) An individual’s aggregate interest in any property, not to exceed the value of eight hundred dollars (\$800).

The statute now provides:

(10) An individual’s aggregate interest in any **tangible personal** property, not to exceed the value of (\$800).

S.B. No. 1306, 55th Leg., 2nd Sess. (Idaho 2000) (emphasis supplied).¹ The amendment became effective on April 12, 2000, the day before Debtors filed their petition for relief.

Presently at issue is Debtors’ attempt to exempt \$250.00 in cash and a savings bond with a face value of \$50.00. Debtors believe these fall within § 11-605(10) as amended. Trustee disagrees.

DISCUSSION

The Court’s resolution of this matter is assisted by several well accepted principles. The first is that the exemption statutes of the State of Idaho must be liberally construed in favor of the debtor. *In re DeBoer*, 99.3 I.B.C.R. 101, 102 (Bankr. D. Idaho 1999). Trustee does not dispute this point.

¹ The Court notes that subsections (1), (2), (3) and (7) of § 11-605 have “granting” language (i.e., “An individual is entitled to exemption of . . .”) while subsections (4), (5), (6), (8), (9) and (10) are incomplete sentences, and the grant of exemption must be presumed from context.

Second, terms used in Idaho's statutes should be ascribed their ordinary and commonly understood meanings. *Tonahill v. Legrand Johnson Construction Co.*, 131 Idaho 737, 740, 963 P.2d 1174, 1177 (Idaho 1998) ("give ordinary words their ordinary meaning unless a contrary purpose is clearly indicated"); *Department of Health and Welfare v. Lisby*, 126 Idaho 776, 779, 890 P.2d 727, 730 (1995). As stated long ago in *Howard v. Grimes Pass Placer Mining Co.*, 21 Idaho 12, 120 P. 170 (Idaho 1911):

A statute written in the plain and ordinary language in common everyday use, dealing with a subject that is neither technical nor scientific, should be construed as the ordinary reading public would read and understand it. In speaking of the rule that should be applied in construing a statute that does not employ technical language, this court in *Re Bossner*, 18 Idaho, 519, 110 Pac. 502 said: "It is a well-established rule of law that when words have not a technical meaning or application, or when they have not been so used or employed in the statute, they should then be given their ordinary significance as they are popularly understood. We must construe the language here used by the Legislature in light of the popular and common acceptance of the terms there employed."

Id. See also, *In re Skaar*, 98.1 I.B.C.R. 13, 14 (Bankr. D. Idaho 1998) ("plain, obvious and rational meanings"); accord, *In re Hanson*, 98.4 I.B.C.R. 124, 125 (Bankr. D. Idaho 1998).²

Third, any expression of intent by the Legislature is relevant. While counsel and the Court had a dialogue at hearing concerning the possible legislative intent

² This approach to state statutes is essentially identical to the federal approach to construction of the Bankruptcy Code itself, which also requires a focus on the plain language and apparent meaning of the statute. See, *Hartford Underwriters Insurance Co. v. Union Planters Bank, N.A. (In re Hen House Interstate Inc.)*, ___ U.S. ___, 2000 WL 684180 (May 30, 2000) at *3; *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241, 109 S.Ct. 1026, 103 L.Ed.2d 290 (1989).

(including that of the sponsor of the legislation, Senator Bart Davis, a well known bankruptcy practitioner from eastern Idaho), the Court is ultimately constrained to deal only with the expression of intent as contained in the reported legislative history, to wit:

Statement of Purpose RS 09705

To provide a limitation on 11-605(a) (10) [*sic*, § 11-605(10)] for tangible personal property only. Thus preserving the rights of wage and other garnishment. In addition, to correct the debtor's claim of exemption notice to be consistent with Idaho Code § 11-605.

Since the announced legislative intent does not address the question presented here,³ the Court must use the other identified tools in construing the applicability of the amended statute to Debtors' exemptions.

"Tangible personal property" would be generally and commonly understood to encompass anything that can be physically possessed by a debtor on the date of filing. There is no apparent reason, in logic or in the statute, why this would not also include cash. It is not at all clear, as Trustee would have it, that as ordinarily understood the term "tangible personal property" would exclude money.

The "catch-all" provision allows debtors to choose something to exempt, from otherwise non-exempt tangible physical property of any kind or nature, up to a

³ Of course, it could well be that neither the drafters of the bill nor the Legislature in enacting it contemplated or intended to allow an exemption in cash. But if that is so, such an intent is not clear from the statutory language selected or from the legislative history. It appears such an intent could easily have been made clear (for example, § 11-605(10) could read "in any tangible personal property, except cash").

maximum value of \$800.00. This provides a modest additional exemption to supplement the other exemptions in personal property which are allowed by the Idaho Code. Whether this exemption is claimed in a “thing” or in cash is immaterial to creditors so long as the value limitation is not exceeded. In fact, claiming cash as exempt instead of a chattel makes it much easier to prove compliance with the truly manifest legislative intent -- that the value of the exemption is limited to no more than \$800.00.

The term “tangible personal property” is actually defined in another section of the Idaho Code, § 63-3616, which provides:

The term “tangible personal property” means personal property which may be seen, weighed, measured, felt or touched, or which is in any other manner perceptible to the senses.

Idaho Code § 63-3616(a).⁴ Absent some indication to the contrary, there is no reason to assume the Legislature meant something different in § 11-605(10) than it did in Chapter 36 of Title 63. Cash can be seen, measured, touched, and is perceptible to the senses. Indeed, a coin collection would fit within this statutory definition and within § 11-605(10); why not then the coin of the realm?

Statutory construction cannot be employed to achieve an “absurd result.”

Skaar, 98.1 I.B.C.R. at 14, citing *Rim View Trout Co. v. Higginson*, 121 Idaho 819, 822, 828 P.2d 848, 851 (1992); *George W. Watkins Family Trust v. Messenger*,

⁴ The balance of the definitional provisions in § 63-3616(b) and (c), and the definition of “intangible personal property” in § 63-602L, are less helpful in resolving the issue concerning cash.

118 Idaho 537, 540, 797 P.2d 1385, 1388 (1990). That the Idaho Legislature might give debtors a cash exemption of up to \$800.00 to go along with the balance of § 11-605 does not strike the Court as necessarily absurd.

However, the Court does not find that the foregoing analysis protects the savings bond. Debtors' counsel conceded at hearing that the savings bond is a document that represents an intangible right to claim the value of the asset from a third party. Debtors' counsel also concedes that the amendment to § 11-605(10) eliminated the ability to claim the \$800.00 exemption in savings accounts, checking accounts, stocks and bonds, and the like. While documents regarding such interests may be tangible, those documents represent intangible rights, and they are not themselves property within the plain and obvious meaning of the statute.⁵ The Court concludes the savings bond is excluded from exemption under amended § 11-605(10).

CONCLUSION AND ORDER

Based upon the foregoing and the record presented in this case, Trustee's objection to Debtors' claim of exemption is OVERRULED in regard to the \$250.00 in cash held by Debtors and claimed as exempt under § 11-605(10) as amended. That exemption is ALLOWED. Trustee's objection to the claim of exemption in the \$50.00 savings bond is SUSTAINED and that exemption is DISALLOWED.

Dated this 8th day of June, 2000.

⁵ Additionally, the approach of the Legislature in chapter 36, Title 63, *supra*, n. 4, supports the characterization of such interests as intangible, and thus their exclusion from § 11-605(10).

